

§ 764.19

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

§ 764.19 Decision.

(a) In reaching its decision, the regulatory authority shall use—

(1) The information contained in the data base and inventory system;

(2) Information provided by other governmental agencies;

(3) The detailed statement when it is prepared under § 764.17(e); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the regulatory authority, including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The regulatory authority shall simultaneously send the decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

(c) The decision of the State regulatory authority with respect to a petition, or the failure of the regulatory authority to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with State law under section 526(e) of the Act and § 775.13 of this chapter. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the regulatory authority shall be considered and included in the record of the administrative proceeding.

§ 764.21 Data base and inventory system requirements.

(a) The regulatory authority shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The regulatory authority shall include in the system information relevant to the criteria in § 762.11 of this chapter, including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer,

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and the agency administering section 127 of the Clean Air Act, as amended (42 U.S.C. 7470 *et seq.*).

(c) The regulatory authority shall add to the data base and inventory system information—

(1) On potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the regulatory authority to prepare the statements required by § 764.17(e); and

(2) That becomes available from petitions, publications, experiments, permit application, mining and reclamation operations, and other sources.

§ 764.23 Public information.

The regulatory authority shall:

(a) Make the information in the data base and inventory system developed under § 764.21 available to the public for inspection free of charge and for copying at reasonable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the regulatory authority determines that the disclosure of such information would create a risk of destruction or harm to such properties;

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

§ 764.25 Regulatory authority responsibility for implementation.

(a) The regulatory authority shall not issue permits which are inconsistent with designations made pursuant to part 761, 762, or 764 of this chapter.

(b) The regulatory authority shall maintain a map or other unified and cumulative record of areas designated unsuitable for all or certain types of surface coal mining operations.

(c) The regulatory authority shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting

proprietary information on the chemical and physical properties of the coal.

PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS

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AUTHORITY: 30 U.S.C. 1201 *et seq.* and Pub. L. 100-34.

SOURCE: 48 FR 41354, Sept. 14, 1983, unless otherwise noted.

§ 769.1 Scope.

This part establishes minimum procedures and standards for designating Federal lands as unsuitable for all or certain types of surface coal mining operations and for terminating designations pursuant to petition.

§ 769.10 Information collection.

The information collection requirements in this part do not require approval of the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

§ 769.11 Who may submit a petition.

Any person having an interest which is or may be adversely affected by surface coal mining operations to be conducted on Federal lands may petition the Secretary to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. This right does not apply to areas set aside from surface coal mining operations under laws other than the Act. For the purpose of this section, a person having an inter-

est which is or may be adversely affected must demonstrate how he or she meets an “injury in fact” test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

§ 769.12 Where to submit petitions.

Each petition to have an area of Federal lands designated as unsuitable or to terminate an existing designation shall be submitted to the Director of the OSM Field Office responsible for that area where the Federal lands are located.

§ 769.13 Contents of petitions.

(a) *Designation.* The only information that a petitioner need provide to designate lands is that required under § 764.13(b) of this chapter.

(b) *Termination.* The only information that a petitioner need provide to terminate a designation is that required by § 764.13(c) of this chapter.

§ 769.14 Initial processing, recordkeeping, and notification requirements.

(a)(1) Within 30 days of receipt of a petition, OSMRE shall determine whether the petition is complete and not frivolous. OSMRE may request other supplementary information that is readily available to be provided by the petitioner. Any request for such supplementary information from the petitioner shall not affect OSMRE's determination that the petition is complete for further processing.

(2) *Complete*, (i) for a designation petition, means that (A) all information required under § 764.13(b) of this chapter has been provided and (B) the information submitted by the petitioner contains significant new allegations of fact and supporting evidence not considered in any previous unsuccessful petition of Federal lands review conducted under Section 522(b) of the Act, that tends to establish that the lands are unsuitable for surface coal mining operations; and (ii) for a termination petition, means that all information required under § 764.13(c) has been provided.

(3) *Frivolous*, for a designation or termination petition, means that: